

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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November 14, 2012

Ramon C. Mendoza, OSC
USEPA Region 5 SE-5J
77 West Jackson
Chicago, Illinois, 60604

Re: Completion of Work under AOC and Post-Removal Site Control

As discussed during the October 4, 2012 conference call among representatives from Georgia-Pacific LLC (Georgia-Pacific), ARCADIS, the United States Environmental Protection Agency (U.S. EPA), the Michigan Department of Natural Resources (DNR), the Michigan Department of Environmental Quality (DEQ), the Michigan Department of Attorney General (AG), and representatives from the Natural Resources Trustee Council for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, the State of Michigan is providing this letter to present the State's position regarding the time frame for the completion of the Work under the Administrative Settlement Agreement and Order on Consent for Removal Action for the former Plainwell Impoundment (AOC), Docket No. V-W-07-C-863, dated February 21, 2007, and the sampling and monitoring associated with that Work as set forth in the Work Plan.¹

The AOC sets forth the Work to be performed by the Respondents² in Section VIII of the AOC, paragraph 15 (emphasis added):

15. Respondents shall perform all actions necessary to implement the Work Plan and comply with this Settlement Agreement. The actions to be implemented generally include the following:

- a. removal of portions of the Plainwell Dam in accordance with the Work Plan;
- b. excavation and/or dredging of submerged sediments, river banks and floodplain soils in the Plainwell Impoundment area in accordance with the performance standards and at the locations specified in the Action Memorandum and the Work Plan;

¹ The Work Plan is defined in the AOC as the document entitled *Former Plainwell Impoundment Area Time-Critical Removal Action Design Report* approved by U.S. EPA on February 14, 2007, and by MDEQ and MDNR on February 13, 2007.

² The AOC was modified in 2010 to remove liquidated Respondent Millennium Holdings, LLC as a party or respondent.

- c. cut-back and stabilization of river banks;
- d. disposal of all PCB contaminated material identified for removal in the Action Memorandum and the Work Plan into existing landfills at the Allied OU;³
- e. the use of excavated clean soils as cover;
- f. re-vegetation of excavated floodplain areas, as specified in the Work Plan;
- g. monitoring during the implementation of the Work and for three years subsequent to receipt of U.S. EPA's Notice of Completion of Work pursuant to Paragraph 77.
- h. an on-Site inspection of the status and condition of excavated and stabilized and/or revegetated areas of river banks and floodplains in the Plainwell Impoundment area with representatives from U.S. EPA and MDNR present, to take place no more than 60 days prior to the third anniversary date of MDNR's receipt of the Notice of Completion of Work pursuant to Paragraph 77.

The AOC also provides for MDNR to commence performance of the post-removal site control activities described in Section 5.6.2 through 5.6.5 of the Work Plan “[u]pon the third anniversary date of MDNR’s receipt of the Notice of Completion of Work pursuant to paragraph 77 of the AOC. Paragraph 77, in turn, states that U.S. EPA will provide written notice upon its determination that “all Work has been fully performed in accordance with this Settlement Agreement” with the exception of post-removal site controls. Paragraph 77 further provides an avenue for U.S. EPA, in consultation with the State, to identify deficiencies and require Respondents to modify the Work Plan, as necessary. As discussed during the October 4, 2012 conference call and further detailed in the October 15, 2012 letter from Michael J. Erickson of ARCADIS to Ramon C. Mendoza of U.S. EPA, Georgia-Pacific is designing and plans to undertake additional Work to stabilize the banks in certain identified areas, including the Western Channel, Removal Area 6B, and Removal Area 3A. The October 15, 2012 letter further noted that Work needed at Removal Areas 7B, 8B, 9B, and 10A is under discussion and will be addressed in a second Technical Memorandum. Also on October 15, 2012, U.S. EPA On-Scene Coordinator Ramon C. Mendoza sent comments to ARCADIS regarding the Spring 2012 Bank Monitoring Report and identified the same areas addressed in the ARCADIS letter as needing repair to deal with unstable banks, an unstable river channel, and erosion. The OSC letter also noted conditions at the former dam powerhouse needing repair and revegetation.

In addition, on October 25, 2012, State Project Manager Paul Bucholtz observed and documented areas near Removal Area 4A upstream of the US-131 bridge where PCB residuals have been re-exposed and an exposure pathway to the Kalamazoo River has been reestablished.

³ The requirement to use existing landfills at the Allied OU was later amended by agreement of all of the signatories to the AOC in a Modification entered in early 2008.

The buffer area, which existed as a submerged shelf in this area, has eroded away, demonstrating a need for immediate corrective action.

Based on the current conditions at the Site, it is the State's position that additional actions are necessary to complete the Work required in the AOC and the Work Plan. The conditions of paragraph 15 of the AOC that "all actions necessary to implement the Work Plan and comply with this Settlement Agreement" have not been met, nor has "all Work . . . been fully performed" as required in paragraph 77 of the AOC. At the time the U.S. EPA issued its Notice of Completion of Work in March 2010, the need for the additional Work was not evident, but recent inspections have revealed areas with unstable banks that require corrective action.

Given the undisputed need for additional Work to satisfy the requirements of the AOC and the Work Plan, it is clear that time for Georgia-Pacific to implement and monitor the results of this additional work is needed prior to MDNR's commencement of post-removal site control activities as provided in paragraphs 18 and 77 of the AOC.

The conclusion of the three-year period following issuance of the March 2010 letter is not the only monitoring required by the AOC, which requires "monitoring during the implementation of the Work and for three years subsequent to receipt of U.S. EPA's Notice of Completion of Work pursuant to Paragraph 77" in paragraph 15(g). Monitoring by Georgia-Pacific is necessary as a practical and a contractual matter "during implementation of the Work," at a minimum. MDNR's commencement of post-removal site control activities was not anticipated by the AOC prior to completion of the Work, and is not appropriate until after the Work is implemented, and after the conclusion of an additional monitoring period post-implementation, to be determined by the U.S. EPA On-Scene Coordinator (OSC). At a minimum, the Work and monitoring period must be extended until a Record of Decision is in place, followed by additional time for post-removal monitoring as deemed necessary by the OSC.

The OSC has the authority to make modifications to the post-removal site control requirements for the Plainwell Impoundment in writing or by oral direction under paragraph 74 of the AOC. That authority may be used, without needing to modify the AOC, to adapt the time frames in the Work Plan for implementation of the Work by Georgia-Pacific and the appropriate time frame for MDNR to commence post-removal site control activities.

Since MDNR's responsibilities for post-removal site control in paragraph 18 of the AOC reference paragraphs 5.6.2 through 5.6.5 of the Work Plan, and since the OSC can modify Section 5.6 of the Work Plan by written or oral direction (later to be memorialized in writing) under paragraph 74 of the AOC, it is the State's position that the additional Work discussed by Georgia-Pacific, ARCADIS, and the state and federal governments can be addressed in a modification by the OSC to Section 5.6 of the Work Plan, with a modified time frame for MDNR to assume the post-removal site control activities.

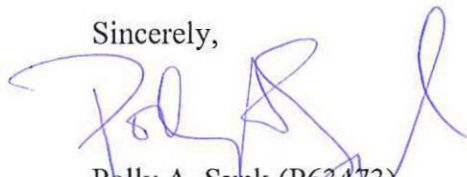
Through this letter, the State of Michigan, represented by the Michigan Department of Environmental Quality, the Michigan Department of Natural Resources, and the Michigan

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Department of Attorney General, requests that the OSC exercise the authority set forth in paragraph 74 of the Administrative Settlement Agreement and Order on Consent for Removal Action for the former Plainwell Impoundment, Docket No. V-W-07-C-863, dated February 21, 2007, to extend the time frame for completion of the Work required under the AOC and to extend the time frame for Georgia-Pacific's monitoring prior to MDNR's commencement of post-removal site control activities, as specified in paragraph 18 of the AOC.

Thank you for your attention to this matter, and please contact Assistant Attorney General Polly Synk if you have any questions regarding this request.

Sincerely,



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PAS/pjb

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